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**NAVAL WAR COLLEGE
Newport, R.I.**

**THE JOINT FORCE COMMANDER'S ETHICAL CHALLENGES
FOR THE 21st CENTURY**

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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Abstract

The continued development of precision guided munitions and remote targeting technologies, and the US military's incorporation of effects-based operations, will present ethical challenges to the joint force commander (JFC) as the 21st century progresses. These technologies are intended to provide the JFC with an unprecedented ability to prosecute targets while at the same time purporting to minimize collateral damage, but have the unintended consequence of blurring the distinction between combatants and noncombatants. This paper does not propose that the US military is explicitly negligent in following the Law of Armed Conflict much less the Just War Tradition (JWT); rather, the paper argues that there is the real potential for divergence between the ethics of JWT and the joint force's capabilities. It is vital that the US military not lose its ethical bearings when conducting war since the lives of innocent noncombatants are at stake, as well as our country's international legitimacy, our own countrymen's support, our professional military values, and our young warfighters' moral health. It is at the JFC's level of command, where strategy is translated to tactical killing that the consideration of ethics in the conduct of war can reemerge. By explicitly providing his ethical decision-making standards, the JFC can ensure 21st century capabilities do not supersede morally right human activity.

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INTRODUCTION

The exponential rise in the flow of communication ... with its endless stream of particularized guidance, programmatic blueprints, acronyms and ever-new buzzwords has the effect of deadening's one's moral sensitivity.

Vice Adm. James B. Stockdale, *Forward to the US Naval War College Course "Foundations of Moral Obligation"*

Substitute "technology" for "communication" in Admiral Stockdale's quote, and his warning would be just as valid. Joint force commanders (JFC) in the 21st century have an increasing array of options available within the framework of effects-based operations designed to maximize technology. Together these technologies are intended to provide the JFC with an unprecedented ability to prosecute targets while simultaneously minimizing collateral damage. Unlike past militaries that had to make "positive attempts to disproportionately harm non-combatants" as a result of the fairly distinct separation of the population from the battlefield, today's United States military is confronted by a type of warfare that blurs the distinction between combatant and noncombatants.¹ Now, the military must take positive steps not to harm noncombatants at all.²

Moreover, into the foreseeable future the United States (US) will fight the Global War on Terrorism (GWOT) against an enemy that is neither a definable military force nor one who holds to the Law of Armed Conflict much less to the Just War Tradition (JWT). Thus, there exists a real probability that the American military's "moral sensitivity" will be challenged. While the intended consequence of today's combination of technology and concepts is to enable the joint force to engage virtually any living or man-made thing identified as a target, the unintended consequence is that JFCs will face ethical challenges as

¹ Tomislav Z. Ruby, "Making Moral Targeting Decisions in War: The Importance of Principal-Agent Motivation Alignment and Constraining Doctrine," *Journal of Military Ethics* 5, no. 1 (2006): 16.

² Ibid.

they determine which targets are valid, how to engage them, and how much collateral damage is acceptable in accomplishing the mission.

This paper does not propose that the US military is explicitly negligent in following the Law of Armed Conflict or the JWT. Rather, the challenges presented above illustrate the practical potential for a disjuncture between the ethics of JWT and the joint force's warfighting capabilities. This paper explores this disjuncture by first briefly reviewing the foundations of JWT in the just conduct of war (*jus in bello*) and its relation to the American professional military ethic. Next, the impact of selected technologies and operational concepts on the commander's ethical dilemmas are discussed and analyzed; specifically, precision guided munitions, remote and interagency targeting, and effects-based operations will be examined. Finally, I provide recommendations to assist joint force commanders to incorporate an ethical approach to conducting operations for themselves and their organization.

ETHICS, *JUS IN BELLO*, AND THE UNITED STATES MILITARY

The soldier, be he friend or foe, is charged with the protection of the weak and unarmed.
It is the very essence of his being.

Gen. Douglas MacArthur, *Reviewing the case of a Japanese war criminal, 1946*

If an ethic is "the body of moral principles or values governing a particular culture or group," then the ethic governing the military is found within JWT's concept of the just conduct of warfare or *jus in bello*.³ All contemporary international law on war is based upon the ethics of the centuries old JWT.⁴ The two primary considerations in *jus in bello* are

³ *Random House Webster's Unabridged Dictionary* (1997), s.v. "Ethic."

⁴ David P. Fidler, "'Non-Lethal' Weapons and International Law: Three Perspectives on the Future," in *The Future of Non-lethal Weapons: Technologies, Operations, Ethics, and Law*, ed. Nick Lewer (Portland: Frank Cass, 2002), 27.

proportionality and discrimination. Both are meant to limit the suffering of noncombatants. Proportionality is defined as the need to use only that force necessary to achieve the military purpose within the context of the stakes involved in the overall conflict.⁵ Discrimination requires that force not be used intentionally against noncombatants. Discrimination still allows for the death of noncombatants if the consequences are unintended and if the legitimate military objective of the use of force outweighs the evil produced, i.e. civilian deaths and other collateral damage.⁶

Three practical benefits obtain from following the ethics of JWT. It protects the innocent noncombatant, which includes both civilians and soldiers no longer fighting (e.g., wounded and prisoners). By following JWT, the American military can claim legitimacy on a legal basis and in the courts of domestic and international public moral opinion. Such legitimacy is particularly vital in the GWOT as this conflict “requires for its success that we [US] separate ourselves ethically from those whom we fight”; while we criticize the terrorists for killing innocent civilians, they level the same charge at us for causing what we discount as unfortunate collateral damage.⁷ Finally, in practical terms JWT sustains the internal cohesiveness of the professional American military. Our warfighters must have the confidence that when they kill, they are justified. Maintaining the distinction between justified and unjustified killing in the mind of the warfighter is critical to “protect[ing] the military cooperative organization from *itself* self-destructing as a social organization as well as from becoming a (potentially) indiscriminate instrument of violence.”⁸

⁵ Ibid.

⁶ Ibid.

⁷ Ted Westhusing, “‘Target Approval Delays Cost Air Force Key Hits’ Targeting Terror: Killing Al Qaeda the Right Way,” *Journal of Military Ethics* 1, no. 2 (2002): 134.

⁸ Ted Westhusing, “Equality Within Military Organizations,” *Journal of Military Ethics* 5, no. 1 (2006): 6. My personal observation in Iraq of the effects of killing on the warfighter is consistent with Westhusing’s argument. While Marines who wounded or killed civilians at vehicle checkpoints were consistently found to

The expectation of ethical behavior in the conduct of war has long been a staple of the professional American military.⁹ Currently, sustaining ethical organizations is a stated objective of the Joint Professional Military Education's Senior-Level Course standards for Joint Strategic Leader Development.¹⁰ The ethical component of the American professional military establishes the norm of behavior for both the individual and the collective organization, and the courses of action and associated outcomes the military is duty-bound to seek.¹¹ An expectation of ethical behavior is never far from the surface in any discussion of the relationship between the American military and the use of force. One needs only to consider the continuing discussions over World War II's strategic bombing campaign, the use of Agent Orange during Vietnam, and the moral fallout of the "Highway of Death" during the Persian Gulf War to realize that American forces are expected to adhere to *jus in bello*.

The changing nature of warfare and weaponry in the 21st century will challenge the assumptions of JWT.¹² Of the four assumptions Fidler offers, three are problematic to *jus in bello* and can be seen in today's GWOT: that organized, professional armies conduct hostilities; that warfare will be between states; and, that distinguishing combatants from non-combatants is possible when engaging in armed hostilities.¹³ Add to these problematic

have been within the Rules of Engagement, these warfighters invariably experienced personal anguish to the point that several had to seek professional counseling and were no longer as combat effective. Conversely, most Marines took great professional pride in killing those known to be insurgents and, when warranted, they were presented awards to laud their ability to kill.

⁹ Martin L. Cook, "Moral Foundations of Military Service," in *Ethics for Military Leaders*, 4th ed., ed. George R. Lucas (Boston: Pearson Custom, 2001), 41-43.

¹⁰ Department of Defense, *Chairman of the Joint Chiefs of Staff Instruction 1800.01C Officer Professional Military Education Policy* (22 December 2005), E-D-3, E-E-4, E-F-3, E-G-4, E-I-4.

¹¹ Don M. Snider, John A. Nagl, and Tony Pfaff, *Army Professionalism, The Military Ethic, and Officership in the 21st Century* (Carlisle, Pa.: Strategic Studies Institute, 1999), 6.

¹² Fidler, 34-35.

¹³ *Ibid.*, 34. Fidler's fourth assumption is that political leaders and states can agree as to what are 'just causes' for going to war (*jus ad bellum*).

assumptions the fact that our opponents probably will not respect the same traditions of just war that we do, and we may be more inclined to allow our own violations.

CHALLENGES TO ETHICS AND *JUS IN BELLO*: THE IMPACT OF SELECTED TECHNOLOGIES

I fear that the current generation of weaponry may pose yet a stiffer challenge [than nuclear weapons] to just-war theory, not because it has made war unthinkable, but because it has made war too thinkable.

Dr. Timothy M. Renick, *Making the Unthinkable Thinkable: Technology and the Justice of War*

The unrelenting effort to exploit the US technological advantages lies at the root of the ethical challenges confronting the US military and its primary warfighters, the JFCs. Certainly, many emerging technologies are ethically right or, at a minimum, neutral in that they do not directly affect the act of killing (e.g., better defensive systems against roadside bombs). Other technologies and their supporting operational concepts, however, are testing the tenets of *jus in bello*. These challenges are particularly evident in the areas of precision guided munitions, remote (e.g., unmanned aerial vehicles) and interagency (e.g., Central Intelligence Agency) targeting, and effects-based operations. Not only does each present its own discrete ethical challenges, but when examined holistically, these technology-enabled capabilities combine to produce a complicated situation where the application of force can become too easy, too distant, and too sanitary.

Precision Guided Munitions

Precision guided munitions (PGMs) are meant to be both effective and efficient. They can attack targets with a very high probability of hit, thus presumably thereby requiring fewer munitions and limiting the exposure of US aircrew. PGMs are also highly touted for limiting collateral damage, a claim that implies they are more “humane” than traditional

munitions, a primary element of *jus in bello*.¹⁴ It would be nigh impossible to argue that PGMs have not become a cornerstone of any joint operation where applying force is required.

Although their efficiency and effectiveness are undeniable, PGMs have the very real potential to produce ethical challenges for the JFC in consequence of their actual use or their expectation of use. In certain circumstances PGMs may make war more destructive, not less, and may put noncombatants at greater risk.¹⁵ For instance, an enemy may choose to limit the effectiveness of PGMs by using human shields, as was seen in Serbia, or by dispersing his military assets among the noncombatant population, as done by Iraq in both Operations Desert Storm and Iraqi Freedom. These examples demonstrate the unethical *and* unlawful behavior of the United States' enemies during these wars. Their behavior, however, does not mitigate the need for the JFC to maintain his own ethical and lawful use of force. The JFC will have to account for the ethical complexities of these situations. He will have to determine whether the military value of attacking the targets will override the JWT requirement of discrimination. If the JFC knows that noncombatants will be killed during a PGM strike, he will have to weigh their deaths against the military value of the target. This military value can come into question when, for instance, the enemy disperses a tank company within a town. Before PGMs, the potential for noncombatant destruction might obviate a massive air strike with "dumb" bombs. PGM capabilities to accurately target each individual tank make them more likely to be used even though there still could be considerable noncombatant property damage, if not deaths. Alternatively, however, the JFC could choose other means to address the tank company such as continued surveillance until

¹⁴ Charles J. Dunlap, Jr., *Technology and the 21st Century Battlefield: Recomplicating Moral Life for the Statesman and the Soldier* (Carlisle, Pa.: Strategic Studies Institute, 1999), 2.

¹⁵ *Ibid.*, 6, 8-9.

the tanks actually threaten his operations and thereby raise their military value when compared to the value of the lives of noncombatants. This scenario demonstrates how PGMs have complicated the JFC's ethical decision-making process rather than simply facilitated it.

Additionally, in the United States' current fights against insurgents who live among the Iraqi and Afghani populations, PGMs are often considered the ideal weapon not only because they are accurate, but also because they do not place American soldiers in harm's way as would be the case in a raid conducted by a ground unit. Fighting insurgents, the JFC has to weigh the potential collateral damage done to noncombatants by a 500-pound PGM against the potential for dead Americans along with any collateral damage done during the raid. The ethical decision will not be a clear one, and will necessarily incorporate the value of the insurgent target to mission success.

Remote and Interagency Targeting

PGMs are increasingly being employed from unmanned aerial vehicles (UAV), which reflects the trend to limit exposure of US forces to enemy actions by employing remote targeting technology. Additionally, in some well-documented cases such as the Central Intelligence Agency's (CIA) UAV missile strike against Al Qaeda operatives in Yemen in 2002, killing that was once considered the province of the professional military is being done by non-military combatants. The use of UAVs and other emergent remote targeting technology, and the increasing use of civilian agency assets, present challenges to the JFC.

Although one can currently argue that the use of armed UAVs resembles that of manned aircraft because both generally fire their weapons beyond the visible range of the enemy, it is not difficult to envisage a situation in the near future where the decision to engage a target with a UAV-launched weapon might be made far from the battlefield and

even by someone not clearly within the JFC's chain of command.¹⁶ These situations present a distinct ethical challenge to the JFC with respect to discrimination. How does the JFC ensure that the target he is about to attack is in fact an enemy combatant, when the only information is a grainy television picture from the UAV? An example of this kind of discrimination difficulty is the attack on a wedding party in Afghanistan that the US believed to be a Taliban gathering. Even though such a situation could also occur with a manned aircraft, UAVs provide a sense of remoteness and detachment, which creates a strong potential for an increased sense of moral detachment when deciding if-and-when to employ them. And, because UAVs by their very nature can operate in parts of the joint battlespace that we do not physically control with troops on the ground where we can conduct accurate, timely battle damage assessments, the wedding party case also exemplifies the vexing problem of promoting the ethical use of force by the US military. Who will be seen in the wrong when Al-Jazeera broadcasts clear video of the target revealing dead women and children while US Central Command issues a sterile press release stating that it had good intelligence, or simply provides a poor quality UAV video of a Hellfire missile hitting a building?

It is not difficult to imagine the day when there are UAVs with artificial intelligence (AI) designed for semi-autonomous operations in order to counter an enemy's ability to interfere with the current controller-to-UAV communications link.¹⁷ Where today's UAVs still provide for a human - - and thus ethical decision-making - - element in the firing process, tomorrow's UAVs with AI will operate with a programmed electronic conscience

¹⁶ Diederik W. Kolff, "'Missile Strike Carried Out With Yemeni Cooperation' – Using UCAVs to Kill Alleged Terrorists: A Professional Approach to the Normative Bases of Military Ethics," *Journal of Military Ethics* 2, no. 3 (2003): 242.

¹⁷ Kolff, 241.

quite possibly created by a noncombatant civilian programmer far removed from the battlefield.¹⁸ The JFC will be challenged by any future reliance on AI weapons from an ethical perspective as he will presumably have little control over the programming of a system's ethical norms.¹⁹ Taken to the extreme, the question arises as to who will bear the ethical responsibility for the lethal actions of these advanced UAVs.

Even in those situations where a combatant decides whether to employ a weapon or not, that person may in fact be a civilian, as presumably was the case of the CIA UAV strike in Yeman. Although a comparison of the professional US military's conception of *jus in bello* and the CIA's is beyond the scope of this paper, it is not a stretch to presuppose that there may be ethical differences as to discrimination and proportionality between the two institutions. The JFC supporting or being supported by CIA assets may be challenged to reconcile any differences in ethical perspectives and must remain vigilant to "any actions that might erode the altruistic warrior ethos that underpins instinctively proper behaviors in the crucible of war."²⁰

Although the uniformed military and the CIA are presumably the only agents of the US Government legally and physically capable of using force overseas, the increased reliance on leveraging all elements of national power means that the JFC will have to account for many different institutional ethical perspectives. Moreover, increased reliance on the interagency process will be particularly prevalent when conducting operations on the lower end of the range of military operations where decisions on how to classify targets and when to use force can be much more problematic. Finally, add to this interagency process the US military's increased reliance on contractors, some of whom are armed, and the JFC has the

¹⁸ Kolff, 242-243.

¹⁹ Kolff, 243.

²⁰ Dunlap, 16.

potential to have to manage a melting pot of ethical viewpoints over which he may have little real influence.

Effects-based Operations

Few concepts better represent the projected future of joint warfighting than effects-based operations, or EBO. Since EBO is greatly enabled by a technological dominance that the US wants to fully leverage, particularly with information technology, PGMs, and stealth, the concept is likely to be a fixture in the joint force well into the foreseeable future.²¹ EBO replaces the concept of attrition where an enemy is “defeated by progressively weakening its military forces” with the “theory of targeting for systematic effect rather [than] absolute destruction.”²² The exact definition of EBO is evolving (and some have started to use the term effects-based approach), but the concept’s basic tenets are consistent: by using a systems approach to analyzing the operational environment, nodes and links will be identified that the JFC can then target to produce a desired effect or response from an enemy. The operating environment is made up of an adversary’s political, military, economic, social, infrastructure, and information systems (PMESII).²³

EBO provides the JFC with two substantial practical ethical challenges to *jus in bello*: identification of targets and indirect effects.²⁴ With respect to the former, EBO planners

²¹ Michael N. Schmitt, “Targeting and Humanitarian Law: Current Issues,” in *Israel Yearbook on Human Rights* 34 (2004), 59; available from <http://www.michaelschmitt.org/images/TargetingandHumanitarianLawIYBfinal.doc>; accessed 2 May 2006.

²² Schmitt, 60.

²³ Department of Defense, Joint Warfighting Center, *JWFC Doctrine Pamphlet 7 Operational Implications of Effects-based Operations* (17 November 2004), 2.

²⁴ Dr. Tim Challans states that EBO has no moral quality because of its unreliability as a theory. See Tim Challans, *Emerging Doctrine and the Ethics of Warfare*, paper submitted for the Joint Services Conference on Professional Ethics, 2006; available from <http://www.usafa.af.mil/jscope/JSCOPE06/Challans06.html>; accessed 1 May 2006. Although Dr. Challans’ position is beyond the scope of this paper, it is interesting to note that his primary critique centers on EBO’s purported ability to control or manage causation effects in the realm of human activity, something that most philosophers of social science do not think is possible. Coincidentally, a similar critique of EBO is being echoed by some senior military officers. See Elaine M. Grossman, “A Top

deconstruct every aspect of an enemy's PMSEII system to identify which nodes should be neutralized or destroyed to achieve the desired effect.²⁵ For example, in order to cause an enemy's regime to revolt, one could target nodes such as power, food, and transportation systems to show the population that supporting their government is leading their country to ruin. Further complicating target identification are "dual-use nodes," those parts of a nation's infrastructure that support both civilian and military spheres.²⁶ Dual-use nodes range from information systems that support both civilian telecommunications and military command and control networks, to a port essential to both a country's domestic economy and its military. With such a large range of nodes that potentially could be linked to achieve an effect, EBO has the unstated consequence of expanding the definition of appropriate military targets or target sets.²⁷ The JFC will have to ensure that the targeting process does not become so mechanical and unconscious that the concept of distinction becomes an afterthought where compelling reasons to not attack a particular target become the discriminator as opposed to the current framework in which a JFC needs compelling reasons why a target must be attacked.

"Indirect effects" are a second ethical challenge created by EBO. Distinction and proportionality both are considerations when considering indirect effects. Indirect effects are the expected, unexpected, and/or delayed or displaced second- and third-order consequences of military action.²⁸ For instance, destruction of any enemy's port may prevent the resupply

Commander Acts to Defuse Military Angst on Combat Approach," *InsideDefense.com*, Pentagon-22-16-1 (20 April 2006); available from <http://www.insidedefense.com>; accessed 7 May 2006.

²⁵ Schmitt, 61.

²⁶ Dunlap, 10.

²⁷ Schmitt, 63.

²⁸ Department of Defense, Chairman of the Joint Chiefs of Staff, *Joint Publication 3-60 Joint Doctrine for Targeting* (17 January 2002), I-6.

of its military, but one indirect effect will be on the civil economy's ability to use that port once hostilities end and recovery begins.

Indirect effects go well beyond simply the identification of targets. Indirect effects present a challenge to the JFC as he will have to measure the impact of conducting an EBO-driven campaign with respect not only to attaining the primary effect, but also to anticipating the unintended and unforeseen more long-term consequences to noncombatants. Destruction of an enemy's government structure (e.g., ministry buildings and supporting bureaucratic capabilities) or degrading its electrical distribution system may very well demonstrate a regime's ineptness or impotence to its people, but the negative impact on the civilian population will be near impossible to predict and just as hard to measure.²⁹ Clearly, JWT's concepts of discrimination and proportionality will be increasingly tested as a result of EBO.

ENABLING THE JOINT FORCE COMMANDER'S ETHICAL INFLUENCE

One can suddenly find himself in a position of not only having to establish [morals and ethics] for himself, but being obliged to write it for others and demand their compliance.

Vice Adm. James B. Stockdale, *Forward to the US Naval War College Course "Foundations of Moral Obligation"*

As detailed above, there are many aspects of today's operating environment that will continue to challenge the US military's commitment to *jus in bello*. The weight of maintaining a joint force's ethical compass falls upon the commander so he must construct an operational plan and infuse a warfighting mindset that incorporates the tenets of *jus in bello*. It is not always enough to simply provide guidance to "limit collateral damage" or to "avoid harming noncombatants" since these admonitions are too easily lost within the hypnotic

²⁹ Schmitt, 61.

paradigm of PGMs, UAVs, and EBO where discrimination and proportionality are often the first casualties.

While the ethical challenges are real, there are areas where the JFC can mitigate them - - or at least ensure that his moral influence is felt during the planning for and conducting of combat operations. During the planning phase, the JFC must ensure through clear guidance and follow-up that the targeting process provides enough fidelity for effective discrimination *and* proportionality with respect to noncombatants and combatants. For instance, the JFC can initially provide his personal standards for meeting *jus in bello* in the types of information and levels of detail he requires in order to make an ethical targeting or other force employment decision. He can then refer back to his *jus in bello* standards when evaluating recommendations and decisions during the subsequent conduct of an operation.

The ability to discriminate will be especially challenged by dual-use nodes, and proportionality will be challenged by secondary and tertiary indirect effects. The requirement for near-absolute fidelity places a premium on intelligence and seasoned judgment. The JFC must allocate his assets so that his intelligence process provides the appropriate data necessary to accomplish more sophisticated discrimination and proportionality calculations.³⁰ The JFC will have to weigh the utility of both his human and non-human intelligence collection capabilities. The commander must ensure that he is aware of those situations where only a human collector can get the necessary information with which to make complex *jus in bello* decisions.

The JFC is ultimately responsible for applying seasoned judgment when determining whether to endanger one of his warfighters in order to gain necessary, accurate intelligence. Recalling General MacArthur's earlier epigraph quote (p. 2), the JFC should establish

³⁰ Dunlap, 11.

specific criteria as to how much risk to accept for his own force relative to the soldier's duty not to harm noncombatants. Although these criteria will account for the legal requirements of international law of war, they will be at their very basic level the JFC's own ethical assessment and vision of *jus in bello*. As Steven Lee states, "Reducing civilian risk comes at a price of increasing combatant risk."³¹

In the conduct of operations, the JFC must insert himself into the decision process in those cases where an ethical judgment is required. He can accomplish this by being in a position to make the decision personally. He can also publish his Rules of Engagement. The former applies in those situations where high-value targets of opportunity such as an enemy's political leadership or a terrorist leader present themselves for attack by the joint force. These situations must be rehearsed so that when they occur, the JFC commander can make quickly the decision whether to attack or not after accounting for all legal and ethical issues with respect to the specific situation. The JFC's intimate involvement is essential as an attack of opportunity almost always puts nearby noncombatants at risk.³² Also, while the Staff Judge Advocate may opine that attacking a specific high value target meets law of war standards, these attacks often epitomize the fine line between being an assassin and a member of a professional military. Ensuring that the line is distinguishable is the responsibility of the JFC, not the lawyer. Finally, attacks on targets of opportunity may be prosecuted by other US agencies within the JFC's battlespace. As discussed earlier, the ethics of *jus in bello* that govern the US military may not be equivalent to those of other government agencies. The JFC must account for any ethical divergence since he will often be directly affected by any lingering, indirect effects of an attack. In those cases where he is

³¹ Steven Lee, "Double Effect, Double Intention, and Asymmetric Warfare," *Journal of Military Ethics* 3, no. 3 (2004): 250.

³² Westhusing, "Killing Al Qaeda the Right Way," 133.

the attack's approval official, JFC can provide his *jus in bello* views to the civilian agency members and can collocate a trusted member of his staff with that other government agency. When the JFC does not make the decision to conduct the attack, he should demand that, at a minimum, he be notified in a timely manner so that he can prepare for any ethical fallout affecting his mission and his force.

By far the most useful means available to the JFC to provide practical ethical guidance are the Rule of Engagement (ROE). A joint force has many layers of subordinate commands down to literally the individual warfighter; each layer is planning and executing its own targeting process to employ those weapons that it directly controls.³³ In this complex operating model, ROE provide the “rules that govern ‘when, where, against whom and how force can be used’” and by which joint force warfighters apply their right to kill.³⁴ Representing an element of command and control, the influence of the civilian leadership's goals, and the goals of higher headquarters, ROE are too often viewed from strictly political and legal perspectives in terms of governing the selection of targets and the subsequent application of force.³⁵

A strictly political and legal view, however, causes a missed opportunity to promote the ethical aspects of the ROE from the JFC to those who will do most of the actual killing. In properly crafting the ROE to meet the peculiarities of his operating environment, the JFC ensures that his ethical perspective is being incorporated throughout his force. By establishing when it is appropriate to kill, the JFC properly shoulders more of the ethical burden of killing. While the processes by which ROE are developed within the joint force

³³ Ibid., 130.

³⁴ Department of Defense, Chairman of the Joint Chiefs of Staff, *Joint Publication 5-00.2 Joint Task Force Planning Guidance and Procedures* (13 January 1999), IV-6.

³⁵ James C. Duncan, “The Commander's Role in Developing Rules of Engagement,” *Naval War College Review* LII, no. 3 (1999): 76.

are well established in doctrine, the JFC should ensure that his personal guidance is known early. He can provide his *jus in bello* and ROE thoughts in his commander estimate, intent, and planning guidance. The JFC should also consider whether involving his joint force chaplain in the ROE development process would underscore to his command the inherently ethical dimension of those rules.

CONCLUSIONS

...the development of the existing [law of war] legislation was carried out on moral grounds, on our moral principles concerning war. Abolishing the rules and the obligations stemming from the treaties and the conventions we have ratified is like giving away our moral values...

Joanne K. Lekea, *'Missile Strike Carried Out With Yemeni Cooperation'*
– *The War Against Terrorism: A Different Kind of War?*

Just think if after the first day [of Operation Allied Force], the Serbian people had awakened and their refrigerators weren't running, there was no water in their kitchens or bathrooms, no lights, no transportation system to get to work...

Lt. Gen. Mike Short, *Airman Magazine*, 1999

Far from being simply just an interesting observation, the subtle erosion of the underpinnings of *jus in bello* has the potential to become more pronounced in the absence of efforts to check or mitigate that erosion. It is vital that the US military not lose its ethical bearings when conducting war since the lives of innocent noncombatants are at stake. A loss of ethical bearing places our country's international legitimacy at risk, as well as our own countrymen's support, our professional military values, and our young warfighters' moral health.

The development of more effective PGMs and remote targeting technologies, and the US military's pervasive incorporation of EBO will continue to present ethical challenges to the JFC as the 21st century progresses. However, it is precisely at the JFC's level of command, where strategy is translated to tactical killing that the consideration of the ethics in

the conduct of war can reemerge. By explicitly citing the importance of *jus in bello* and providing his ethical decision-making standards for achieving just that, the JFC can ensure that 21st century capabilities do not supersede morally right human activity. As Robert Nisbet so correctly stated, “Ethical decision-making, like leadership, requires... an understanding that the individual himself, not the organization, bears responsibility.”³⁶

³⁶ Robert Nisbet, “The Impact of Technology on Ethical-Decision-Making,” in *The Technological Threat*, ed. Jack D. Douglas (Englewood Cliffs, N.J.: Prentice-Hall, 1971), 52.

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